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Holme Roberts & Owen LLP

February 7, 2001

**VIA HAND DELIVERY**

James D. Freeman, Esq.

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*John D. McCarthy**(303)866-0457**mccartj@hro.com*

Re: United States v. W.R. Grace & Co. and Kootenai Development Corporation, Civ. No. 00-167-M-DWM (D. Mont.)

*Attorneys at Law**1700 Lincoln Street**Suite 4100**Denver, Colorado**80203-4541**Tel (303)861-7000**Fax (303)866-0200**www.hro.com**Denver**Salt Lake City**Boulder**Colorado Springs**London*

Dear Messrs. Freeman and Cohn:

W.R. Grace & Co. and Kootenai Development Company ("KDC") are disappointed that the court-ordered mediation before Judge Leavy in Portland, Oregon was not successful. As you know, my clients negotiated in good faith at the mediation and offered substantial compromises in order to address environmental issues related to vermiculite mining and processing in Libby, Montana. The Government's unwillingness to compromise on any of the issues subject to the mediation was unfortunate.

W.R. Grace & Co. and KDC remain interested in expediting cleanup activities in Libby and resolving this litigation. Therefore, expressly reserving all rights and denying any liability in connection with the above-captioned lawsuit, Defendants make the following offer:

1. Defendants will assume responsibility for removing and appropriately disposing of the soils and demolition debris stockpiled by EPA at the Parker property.

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2. The Government will covenant not to sue Defendants for the disposal of any materials removed from the Parker property pursuant to paragraph 1, above, except for asbestos (i.e., the covenant covers contaminants in disposed material not directly resulting from asbestos released during vermiculite processing at the Screening Plant).

3. Defendants will furnish and haul, at no charge, gravel and topsoil from KDC's property to be used for EPA's restoration activities at the Parker property.

4. Defendants will remove impacted soils at the KDC's Kootenai Bluffs and Kootenai Flyway properties pursuant to the work plan submitted to EPA last fall for Removal of Asbestos Impacted Soils at the Kootenai Development Company-Kootenai River Properties #1 and #2 (27 September 2000).

5. EPA will dismiss the above-captioned lawsuit with prejudice, including any claims for penalties.

KDC and W.R. Grace & Co. strongly urge the Government to give serious consideration to this offer. Defendants' proposal will accomplish the Government's stated objectives with respect to the Screening Plant *at no cost to the EPA*. This will stop the current hemorrhaging of taxpayer money and free up those funds for other sites, which Mr. Peronard informed us had been shut down due to EPA's budget overruns in Libby.

KDC and W.R. Grace & Co.'s offer also avoids the extensive ecological damage that will result from EPA's planned construction of a disposal site in Lincoln County, which EPA informs us will require the clear-cutting and excavation of approximately 40 acres of forested land. It is ironic that EPA plans to destroy 40 acres of woodland in order to dispose of Screening Plant soils that, in large part,

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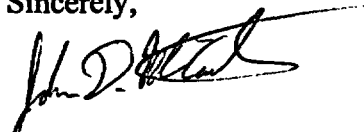
contain the same trace concentrations of asbestos found in the soils that will have to be removed from the Lincoln County site in order to accommodate them.¹

Further, KDC and W.R. Grace & Co. have grave concerns that EPA's proposed Lincoln County option has NEPA implications that the agency has not considered thoroughly. The expenditure of \$1-2,000,000 of federal funds for the construction of a waste disposal facility on state or county land certainly constitutes a major federal action significantly affecting the quality of the human environment. See 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3. See also 40 C.F.R. § 1500.3 (no federal agency, including EPA, is exempt from NEPA requirements). We are aware of no exceptions that would excuse EPA from fully complying with NEPA under the present circumstances. Proceeding without performing an EIS or complying with the other requirements of NEPA could subject the government to legal action.

This offer expires either 10 days from the date of this letter or upon the Court's issuance of a decision on the Government's motion for an order in aid of immediate access in the above-captioned case, whichever is earlier.

If you have any questions regarding the contents of this letter, please contact me.

Sincerely,



John D. McCarthy

¹EPA's notes from the January 12, 2001 CAG meeting indicate that asbestos levels found in soils at the Lincoln County site are similar to those found in the majority of soils excavated from the Parker property (i.e., $\leq 1\%$).